

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

JANUARY TERM, 1908

523

No. 1841.

ADAMS MONROE MANUFACTURING COMPANY, CORA
BEHREND, L. A. SAMSTAG, H. F. SAMSTAG, ET AL.,
APPELLANTS,

vs.

HENRY B. F. MACFARLAND, HENRY L. WEST, AND
CHESTER HARDING (ACTING), COMMISSIONERS OF
THE DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED OCTOBER 31, 1907.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

JANUARY TERM, 1908.

No. 1841.

ADAMS MONROE MANUFACTURING COMPANY, CORA BEHREND, L. A. SAMSTAG, H. F. SAMSTAG, J. H. SWEENEY, M. A. BAILEY, MELVILLE D. HENSEY, AND WILLIAM H. CONLEY, TRUSTEES; LEO SIMMONS, CHARLES M. CARTER, JOHN W. MORRIS, AND ALICE G. HOLMEAD, APPELLANTS,

vs.

HENRY B. F. MACFARLAND, HENRY L. WEST, AND CHESTER HARDING (ACTING), COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

INDEX.

	Original.	Print.
Caption	<i>a</i>	1
Petition	1	1
Memorandum: Verdict of jury of seven, with award of damages and assessments for benefits.....	2	2
Decree.....	2	2
Mandate	3	3
Order vacating decree so far as it vacates assessment.....	5	6
Motion of Abner Greenleaf and others to dismiss suit	5	6
Order directing petitioners to reassess benefits.....	6	7
Amended and supplemental petition of Commissioners of the District of Columbia	6	7
Order warning persons interested to appear.....	9	10
Memorandum: Verdict of jury.....	10	11
Affidavit of Leo Simmons.....	10	11
Memorandum of Justice Gould.....	11	12
Motion of Alice G. Holmead to set aside verdict.....	12	12

	Original.	Print.
Order overruling motion.....	13	13
Order finally ratifying and confirming verdict.....	13	13
Notation of appeals and order fixing bond for costs....	14	14
Memorandum : Appeal bonds approved and filed	15	14
Memorandum : Order extending time in which to settle exceptions and file transcript.....	15	14
Memorandum : Order extending term.....	15	14
Bill of exceptions made part of record	15	14
Bill of exceptions.....	17	15
Order overruling motion to strike out.....	17	15
Appellants' plea.....	18	15
Notice to men summoned as jurors.....	20	17
Order that jury view land.....	21	17
<i>In re</i> impaneling and examination of jurymen.....	22	18
Prayers of Commissioners of the District of Columbia	22	18
Charge to jury.....	23	19
Prayers of appellants.....	25	20
Motion to discharge jury.....	27	21
Verdict of jury.....	27	21
Schedule of assessment of benefits.....	29	22
Exceptions of appellants.....	31	24
Affidavit of R. E. Bradley <i>et al.</i>	47	36
Affidavit of Wm. B. Robinson, deputy marshal.....	49	38
Stipulation as to record on appeal.....	52	39
Directions to clerk for preparation of transcript of record.....	53	40
Order extending time further to file transcript of record and allow- ing severance.....	55	41
Clerk's certificate	56	41

In the Court of Appeals of the District of Columbia.

No. 1841.

ADAMS MONROE MANUFACTURING COMPANY ET AL., Appellants,
vs.
HENRY B. F. MACFARLAND ET AL.

a Supreme Court of the District of Columbia.

In re EXTENSION OF ELEVENTH STREET NORTHWEST. No. 556,
District Court.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Petition.*

Filed May 31, 1899.

In the Supreme Court of the District of Columbia, Sitting as a District Court of the United States for Said District.

In re EXTENSION OF ELEVENTH STREET NORTHWEST.

To the Supreme Court of the District of Columbia, sitting as a District Court:

The petition of John B. Wight, John W. Ross, and Lansing H. Beach, Commissioners of the District of Columbia, respectfully shows as follows:

1. That Congress by act approved March 3, 1899, entitled "An Act to extend S Street, in the District of Columbia, and for other purposes," directed your petitioners to institute by a petition in the Supreme Court of the District of Columbia, sitting as a District Court, a proceeding to condemn the land necessary for the extension of Eleventh street northwest on a straight extension of the lines thereof, as now established in the city of Washington, with a width of ninety feet, from Florida avenue to Harvard street, and thence with the same width and in a straight line to Lydecker avenue, joining said avenue with its center line opposite the center line of Eslin avenue, under and according to the

provisions of chapter eleven of the Revised Statutes of the United States relating to the District of Columbia.

2. That a map of the proposed extension of Eleventh street, showing the number and designation of lots affected, the names of the owners thereof, and the areas of land required for the extension, has been prepared, and a copy thereof is annexed as a part of this petition marked "Exhibit D. C. No. 1."

3. That said act provides, among other things, that of the amount found due and awarded as damages for and in respect of the land condemned for the extension of said Eleventh street at least one-half thereof shall be assessed by said jury against those pieces or parcels of ground abutting that portion of the street to be opened, and extending to a depth of two hundred feet from the building lines of said Eleventh street as extended.

Wherefore your petitioners pray this Honorable Court to direct the Marshal of the District of Columbia to summon a jury of seven judicious disinterested men, not related to any party interested, to be and appear on the premises, on a day specified, to assess the damages, if any, which each owner of land through which Eleventh street is proposed to be extended, as aforesaid, may sustain by reason thereof, and that such other and further orders may be made, and proceedings had, as are contemplated by said Act of Congress, and by chapter eleven of the Revised Statutes of the United States relating to the District of Columbia, to the end that a permanent right of way for the public over said lands may be obtained and secured for the aforesaid extension of Eleventh street, and they will ever pray, etc.

JOHN B. WIGHT,
JOHN W. ROSS,
LANSING H. BEACH,

Commissioners of the District of Columbia.

E. H. THOMAS,
A. B. DUVALL,
Attorneys for Petitioners.

2

Memorandum.

February 20th, 1900.—Verdict of Jury of Seven, with Award of Damages and Assessments for Benefits, filed.

Decree.

Filed July 3, 1900.

In the Supreme Court of the District of Columbia, Sitting as a District Court.

In re THE EXTENSION OF ELEVENTH STREET, NORTHWEST. No. 556,
District Court.

This cause came on to be heard on the motion of the petitioners herein, the Commissioners of the District of Columbia filed under

the Act of Congress approved June 6, 1900, to confirm the verdict, award and assessment of the jury heretofore filed herein and to overrule the exceptions filed by the several owners of real estate who are assessed for benefits in and by said verdict of said jury; and the said motion was argued by counsel for the respective parties; and it appearing to the Court that the order *nisi*, confirming said verdict, award and assessment of said jury has been duly published as therein provided, and that the owners of the property taken for the extension of said street, and the owners of the land assessed with one-half of the amount awarded for damages have been duly notified of the pendency of this proceeding, and of the said assessment, as provided by the order of the Court heretofore passed herein,—

It is this 3d day of July, A. D. 1900, by the Court Adjudged, Ordered and Decreed that the several awards of the said jury for and in respect of the land condemned for the extension of said Eleventh street be, and the same are hereby finally ratified and confirmed; and that the land necessary for the extension of Eleventh Street northwest on a straight extension of the lines thereof, as now established in the City of Washington, with a width of ninety feet, from Florida Avenue to Harvard street and thence with the same width and in a straight line to Lydecker Avenue, joining said Avenue with its center line opposite the center line of Eslin Avenue and in this proceeding described and shown on the plat filed herein, be, and the same is hereby condemned; and payment of the several sums of money in said verdict found to be due and payable for the lands aforesaid shall be made in accordance with the Act of Congress, approved March 3, 1899, and the amendment thereof approved June 6, 1900, pursuant to which, proceedings in this cause have been had.

And it is further adjudged, ordered and decreed that the several assessments for benefits made, returned and levied by the jury in its aforesaid award filed in this cause, be, and they are hereby declared illegal, null and void, and the same are hereby set aside and vacated; and from so much of this order as declares said assessments to be illegal, null and void, the petitioners, in open Court pray an appeal to the Court of Appeals which is hereby allowed.

E. F. BINGHAM, C. J.

3

Mandate.

Filed July 22, 1903.

UNITED STATES OF AMERICA, ss:

[SEAL.]

The President of the United States of America to the Honorable the Justices of the Supreme Court of the District of Columbia, Greeting:

Whereas, lately in the Supreme Court of the District of Columbia, before you or some of you, in a cause entitled *In re* Extension of Eleventh Street northwest, No. 556, District Court, wherein the

order of the said Supreme Court entered in said cause on the 3d day of July, A. D. 1900, is in the following words, viz:

"In re THE EXTENSION OF ELEVENTH STREET. No. 556, District Court.

This cause came on to be heard on the motion of the petitioners herein, The Commissioners of the District of Columbia, filed under the Act of Congress approved June 6, 1900, to confirm the verdict, award, and assessment of the jury heretofore filed herein, and to overrule the exceptions filed by the several owners of real estate who are assessed for benefits in and by said verdict of said jury; and the said motion was argued by counsel for the respective parties, and it appearing to the court that the order *nisi*, confirming said verdict, award, and assessment of said jury, has been duly published as therein provided, and that the owners of the property taken for the extension of said street and the owners of the land assessed with one-half of the amount awarded for damages have been duly notified of the pendency of this proceeding and of the said assessments, as provided by the order of the court heretofore passed herein—

It is, this 3d day of July, A. D. 1900, by the court adjudged, ordered and decreed that the several awards of the said jury for and in respect of the land condemned for the extension of said Eleventh street be, and the same are hereby, finally ratified and confirmed, and that the land necessary for the extension of Eleventh street northwest on a straight extension of the lines thereof as now established in the city of Washington, with a width of ninety feet, from Florida avenue to Harvard street, and thence, with the same width and in a straight line, to Lydecker avenue, joining said avenue with its center line opposite the center line of Eslin avenue, and in this proceeding described and shown on the plat filed herein, be, and the same is hereby condemned; and payment of the several sums of money in said verdict found to be due and payable for the lands aforesaid shall be made in accordance with the act of Congress approved March 3, 1899, and the amendment thereof approved June 6, 1900, pursuant to which proceedings in this cause have been had.

And it is further adjudged, ordered and decreed that the several assessments for benefits made, returned, and levied by the jury in its aforesaid award filed in this cause be, and they are hereby, declared illegal, null, and void, and the same are hereby set aside, and vacated; and from so much of this order as declares said assessments to be illegal, null and void the petitioners in open Court pray an appeal to the Court of Appeals, which is hereby allowed.

E. F. BINGHAM, *C. J.*"

4 as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, taken by John B. Wight, John W. Ross and Lansing H. Beach, Commissioners of the District of Columbia, whereon Eugene Byrnes, *et al.*,

were made the parties appellees, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas at the April Term, A. D. 1901, of said Court of Appeals, the death of John Sherman, one of the appellees, having been suggested, it was, at the January Term, A. D. 1902 of said Court of Appeals, ordered that Myron M. Parker, and Winfield S. Kerr, Executors of the said John Sherman, deceased, be made parties appellees herein.

And whereas at the April Term, A. D. 1901, of said Court of Appeals, the retirement of John B. Wight and the appointment of Henry B. F. Macfarland as his successor as Commissioner of the District of Columbia having been suggested, it was ordered that the said Henry B. Macfarland, as such Commissioner, be made a party appellant herein.

And whereas at the October Term, A. D. 1901, of said Court of Appeals, the retirement of Lansing H. Beach, and the appointment of John Biddle as his successor as Commissioner of the District of Columbia, having been suggested, it was ordered that the said John Biddle, as such Commissioner, be made a party appellant herein.

And whereas, in the term of April, in the year of our Lord one thousand nine hundred and two, the said cause came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered adjudged and decreed by this Court that the order of the said Supreme Court in this cause appealed from, and only so far as appealed from, be, and the same is hereby, reversed; and it is further ordered that this cause be, and the same is hereby, remanded to the said Supreme Court with directions to vacate such part of the said order, and for such further proceedings in the case according to law as may be just and right.

April 1, 1902.

And whereas said cause was removed to the Supreme Court of the United States by virtue of an appeal taken by Henry B. F. Macfarland, John W. Ross and John Biddle, Commissioners of the District of Columbia, agreeably to the Act of Congress in such case made and provided;

And whereas at the October Term, 1902, of said Supreme Court of the United States the following decree was entered, viz:

"It is now here ordered, adjudged and decreed by this Court that this appeal be, and the same is hereby, dismissed for the want of jurisdiction.

December 1, 1902."

as by the inspection of the mandate of said Supreme Court of the United States fully and at large appears.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this Court as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Richard H. Alvey, Chief Justice of said Court of Appeals, the 22d day of July in the year of our Lord one thousand nine hundred and three.

ROBERT WILLETT,
Clerk of the Court of Appeals
of the District of Columbia.

5 *Order Vacating Decree so far as it Vacates Assessment.*

Filed March 4, 1904.

In the Supreme Court of the District of Columbia, Holding a
District Court.

In re EXTENSION OF ELEVENTH STREET. No. 556.

Upon consideration of the mandate of the Court of Appeals filed in this case, it is this 4th day of March, 1904, ordered that the decree in this case, vacating said assessment and only so far as it vacates said assessment, be and the same is hereby set aside and vacated, in accordance with said mandate. And the case being further heard on motion of the petitioners for confirmation of the assessment for benefits according to the verdict of the jury of seven, and after argument by counsel for the parties, and due consideration of the exceptions of the respondents, from which it appears to the Court that they and each of them are dissatisfied with said verdict, it is therefore ordered that said motion to confirm be and the same is hereby, in all respects, overruled; and it is further ordered, in case the petitioners desire to proceed further in the premises, that they shall within a reasonable time make application to this court for directing the United States Marshal to summon a jury of twelve as provided by law. To which order petitioners except and pray, and appeal in open Court.

ASHLEY M. GOULD, *Justice.*

Motion of Abner Greenleaf and Others to Dismiss, &c.

Filed June 17th, 1904.

(As Appears on District Docket.)

In the Supreme Court of the District of Columbia, Holding a
District Court.

In re EXTENSION OF ELEVENTH STREET. No. 556.

Now come Abner Greenleaf and other property owners, representative of record by Leo Simmons, and Samuel Maddox and move the Court to dismiss this suit, as to any further proceedings in this

cause, because the law under which such proceeding must be had, has been repealed. Second, for failure of the petitioners to proceed as required by the order of this Court, passed in the cause on March 4, 1904.

LEO SIMMONS AND
SAM'L MADDOX,
Att'ys for said Owners.

6 Messrs. Duvall & Sinclair, Att'ys for Petition-s:

Take notice, we will call up the above motion before Mr. Justice Gould, holding a District Court on Tuesday the 7th day of June, 1904, at ten o'clock A. M. or as soon thereafter as counsel can be heard.

LEO SIMMONS AND
SAM'L MADDOX, *Att'y's.*

Service accepted.

6/2/04.

A. B. DUVALL,
Per G.

Order Directing Petitioners to Re-assess Benefits, &c.

Filed June 17, 1904.

In the Supreme Court of the District of Columbia, Holding a District Court.

In re EXTENSION OF ELEVENTH STREET. No. 556.

Upon consideration of the proceedings herein and the motion filed by Abner Greenleaf and others on June 17th A. D. 1904, it is by the Court, this 17th day of June, A. D. 1904, ordered, That the petitioners in the above-entitled cause, within sixty days from the date hereof proceed in the matter of the re-assessment of benefits herein, in accordance with the terms and provisions of the Act of Congress approved June 6, 1900, entitled "An Act for the Extension of Columbia Road east to Thirteenth Street, and for other purposes."

By the Court: ASHLEY M. GOULD, *Justice.*

Amended and Supplemental Petition of Commissioners, D. C.

Filed August 9, 1904.

In the Supreme Court of the District of Columbia, Holding a District Court.

In re THE EXTENSION OF ELEVENTH STREET NORTHWEST. No. 556,
District Court,

The petition of Henry B. F. Macfarland, Henry L. West, and Chester Harding, (acting) Commissioners of the District of Columbia, respectfully represents:

1. That heretofore, to wit, on the 31st day of May, 1889, the then Commissioners of the District of Columbia, pursuant to the provisions of an Act of Congress approved March 3, 1899, filed
7 a petition herein praying the condemnation of certain land necessary for the extension of Eleventh Street, Northwest, on a straight extension of the lines thereof, with a width of ninety feet, from Florida Avenue to Harvard Street, and thence, with the same width and in a straight line, to Lydecker Avenue, joining said Avenue with its center line opposite the center line of Eslin Avenue, under and according to the provisions of Chapter XI of the Revised Statutes of the United States relating to the District of Columbia.

2. That thereafter, on the 10th day of November, 1899, this Honorable Court directed the United States Marshal for the District of Columbia to summon a jury of seven judicious, disinterested men, not related to any party interested in the proceeding, to be and appear upon the premises described in said petition on a day specified, to assess the damages, if any, which each owner of land might sustain by reason of the extension of said Eleventh Street, as aforesaid, and to assess at least one-half of the amount found due and awarded as damages by said jury in respect of the land condemned for said extension, against those pieces or parcels of ground abutting that portion of the street to be opened and extended to a depth of two hundred feet from the building lines of said Eleventh Street as extended; and to further proceed in accordance with the provisions of the aforesaid Act of Congress approved March 3, 1899.

3. That thereafter a jury of seven persons was impaneled, received instructions from the Court as to its duties, proceeded to assess the damages and benefits, and on the 16th day of February, 1900, filed its verdict and award herein.

4. That on March 19, 1900, an order of ratification *nisi* of said verdict and award was passed, and on July 3, 1900, the Court passed an order herein finally ratifying and confirming the several awards of said jury for and in respect of the land condemned for the extension of Eleventh Street as aforesaid, but vacated the assessments for benefits made by the jury and declared them illegal, null and void.

5. That thereafter, on appeal to the Court of Appeals of the District of Columbia, the said order of the Court passed herein was reversed in so far as it vacated the said assessments for benefits.

6. That on the 4th day of March, 1904, that portion of the aforesaid order which vacated said assessments for benefits, was set aside by the Court, in accordance with the mandate of the Court of Appeals and the case being further heard, upon motion of the petitioners to ratify and confirm the assessments for benefits made by the jury, the Court, upon consideration of certain exceptions filed in the case (from which it appeared that the exceptants were dissatisfied with the verdict of the jury), passed an order overruling the motion to ratify and confirm said assessments for benefits.

7. That Section 12 of the Act of Congress approved June 6, 1900, entitled "An Act for the Extension of Columbia Road east of Thir-

teenth Street, and for other purposes," provides, amongst other things, that:—

8 "In the event that the assessment for benefits levied by the jury in relation to said Eleventh street shall for any reason be declared void, the said Commissioners of the District of Columbia are authorized and directed to make application to said court for a re-assessment of such benefits under and in accordance with the provisions of this Act."

8. That on the 17th day of June, 1904, the Court passed an order herein directing the petitioners, within sixty days from said date, to proceed in the matter of the re-assessment of benefits herein, in accordance with the terms and provisions of the said Act of Congress approved June 6, 1900.

The premises considered, your petitioners pray:

First. That this Honorable Court may cause public notice of not less than ten days to be given of the filing of this, the amended and supplemental petition of the Commissioners of the District of Columbia, by advertisement in such manner as the Court shall prescribe, warning all persons having any interest in the proceedings to attend Court on a day to be named in said notice and to continue in attendance until the Court shall have made its final order ratifying and confirming the re-assessments of benefits of the jury herein.

Second. That the United States Marshal for the District of Columbia may be directed to summon seven judicious, disinterested men not related to any person interested in this proceeding and not in the service or employ of the District of Columbia or of the United States, to re-assess such amount of the amount heretofore found to be due and awarded as damages for and in respect of the land condemned for the extension of Eleventh street, as aforesaid, as benefits, and to the extent of such benefits, against those pieces or parcels of land on each side of said Eleventh street, as extended, and also on any and all pieces or parcels of land which have been benefited by the extension of said Eleventh street, as aforesaid, as said jury may find said pieces or parcels of land have been benefited by the extension of Eleventh street, northwest, in accordance with the provisions of the aforesaid Act of Congress approved June 6, 1900.

And that such other and further orders may be passed, and such other proceedings may be had herein, as are contemplated by said Acts of Congress approved March 3, 1899, and June 6, 1900.

HENRY B. F. MACFARLAND,
HENRY L. WEST,
CHESTER HARDING (*Acting*),
Commissioners, D. C., and Petitioners Herein.

A. B. DUVALL,
A. LEFTWICH SINCLAIR,
Attorneys for Petitioners.

DISTRICT OF COLUMBIA, ss:

Personally appears Henry B. F. Macfarland, who upon oath says, that he is President of the Board of Commissioners of the District of Columbia, whose foregoing petition he has read, and that the facts therein stated are true to the best of his knowledge and belief.

HENRY B. F. MACFARLAND.

9 Subscribed and sworn to before me this 5th day of August,
A. D. 1904.

[SEAL.]

WILLIAM TINDALL,
Notary Public, D. C.

(Endorsed:) Let this amended petition be filed. Job Barnard,
Justice.

Order Warning Persons Interested to Appear.

Filed October 27, 1904.

In the Supreme Court of the District of Columbia, Holding a District Court.

In re THE EXTENSION OF ELEVENTH STREET NORTHWEST. No. 556,
District Court Docket.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to an order passed herein on the 17th day of June, 1904, and the provisions of an Act of Congress approved June 6, 1900, entitled "An Act for the extension of Columbia Road east of Thirteenth street and for other purposes," have filed an amended and supplemental petition herein, praying that a jury of seven (7) judicious, disinterested men, not related to any person interested in this proceeding and not in the service or employ of the District of Columbia or of the United States, be summoned by the United States Marshal for the District of Columbia to re-assess such amount of the amount heretofore found to be due and awarded as damages for and in respect of the land condemned for an extension of Eleventh street, northwest, on a straight extension of the lines thereof, with a width of ninety (90) feet, from Florida avenue to Harvard street, and thence, with the same width and in a straight line, to Lydecker avenue, joining said avenue with its center line opposite the center line of Eslin Avenue, as benefits, and to the extent of such benefits, against those pieces or parcels of land on each side of said Eleventh street as extended, and also on any and all pieces or parcels of land which have been benefited by the extension of said Eleventh street, as aforesaid, as said jury may find said pieces or parcels of land have been benefited, in accordance with the provisions of the aforesaid Act of Congress. It is, by the Court, this 27th day of October, A. D. 1904, *ordered*: That all persons having any interest in this proceeding be, and they are hereby, warned and required to appear in

this court on or before the 28th day of November, A. D. 1904, and to continue in attendance until the court shall have made its final order ratifying and confirming the reassessment of benefits of the jury to be impaneled herein. It is further ordered, That this notice and order be published once in The Washington Law Reporter, and on six secular days in The Evening Star, The Washington Post and The Washington Times, newspapers published in said District, before the 28th day of November, A. D. 1904.

By the court:

ASHLEY M. GOULD, *Justice*.

10

Memorandum.

June 6, 1906.—Verdict of Jury, with Assessments for Benefits, filed.

Affidavit of Leo Simmons and Memorandum of Justice Gould.

Filed February 5, 1907.

In the Supreme Court of the District of Columbia, Holding a District Court.

In re EXTENSION OF ELEVENTH STREET. No. 556.

Personally appeared Leo Simmons and being duly sworn, says that he is one of the respondents and owner of part of lot 5, situated at the S. E. corner of 11th & Columbia Road, which has been assessed to the extent of \$2000 by the jury in this case. That he also represents other respondents in said cause and did represent them on the 17th day of June 1904, when the order passed on that date by Mr. Justice Gould, which purports to direct the Commissioners of the District of Columbia to proceed in the premises in accordance with the Act of June 6, 1906, was signed. That at the time said order was passed, affiant was present in Court and objected to its being signed. That the order so signed was already prepared when brought into Court by the late Andrew B. Duvall who handed same to Mr. Justice Gould for his signature. That at the time said order was signed, no hearing upon same was had, and the question as to whether or not the petitioners in said case should proceed under the Act of June 6, 1900 or under the Act of March 3, 1889 was not argued or considered by the Court, so far as affiant saw anything to indicate any consideration, and that affiant objected to the signing of said order at the time. That affiant had seen neither the original or a copy of said order, and only knew from the statement to the Court by the said Andrew B. Duvall that it was a direction to the Commissioners to proceed in the case in accordance with the Act of June 6 aforesaid. Affiant's recollection of the matter in relation to said order is that he had served notice on Mr. Duvall of a motion to dismiss the cause, but did not file the original

motion, intending to file same at the time of the hearing, and, as aforesaid, when Mr. Duvall came into Court he had an order already prepared indicating his willingness to proceed in the matter, in accordance with said order. On objection being made by affiant, the Court, Mr. Justice Gould, suggested that any objection affiant desired to make, could be taken advantage of in the future, as he deemed it unnecessary to have any hearing in relation to same then. Affiant asked Mr. Justice Gould if he would not require the petitioners to serve notice on the attorneys of record in said case before the petition was filed. Mr. Justice Gould indicated his willingness so to do and nothing more was said about the matter. Affiant afterwards learned that the supplemental petition filed in said cause without notice was so filed by permission of Mr. Justice Barnard, (the only Justice holding Court during the summer vacation) who affiant believes was not aware of the facts referred to. Affiant herewith attaches to this affidavit as a part of same, a statement which he received from Mr. Justice Gould in relation to the facts surrounding the signing of said order.

LEO SIMMONS.

Subscribed and sworn to before me this 5th day of February, 1907.

J. R. YOUNG, *Clk*,
By F. E. CUNNINGHAM, *Ass't Clk*.

11 Supreme Court of the District of Columbia, Justice's Chambers.

JAN'y 31, 1907.

In the matter of the Extension of Eleventh Street (District Case No. 556) my recollection is that at the time I signed the order of June 17, 1904, wh. directs the petitioners to proceed in the matter of the re-assessment of benefits in accordance with the provisions of the Act of June 6, 1900, there was no discussion as to the Act under wh. the petitioners should proceed; at least, I gave the question no consideration. I have no remembrance of Mr. Simmons consenting to the order.

ASHLEY M. GOULD, *Justice*.

12 *Motion of Alice G. Holmead to Set Aside Verdict.*

Filed April 8, 1907.

In the Supreme Court of the District of Columbia, Holding a District Court.

In re EXTENSION OF ELEVENTH STREET NORTHWEST. No. 556.

Now comes Alice G. Holmead and shows unto the Court that she is the owner of lots 18 to 29 in Block 44 and lot 3 in Block 45, in the certain subdivision situated in the county of Washington, Dis-

trict of Columbia, known as Holmead Manor, which said subdivision lies north of a certain street formerly called Lydecker street but now known as Monroe street in the District of Columbia. That the jury in this cause without authority of law levied an assessment against her said lots, in all amounting to the sum of \$530.00. She therefore, moves the Court to vacate and set aside said verdict in order that the cloud may be removed from her title, upon the grounds that this Court has no jurisdiction to direct or confirm an assessment against her said property.

LEO SIMMONS,
Att'y for Alice G. Holmead.

13 *Order Overruling Motion of Alice G. Holmead.*

Filed April 8, 1907.

In the Supreme Court of the District of Columbia, Holding a
District Court.

In re EXTENSION OF 11TH ST. No. 556.

Upon consideration of the motion of Alice G. Holmead this day filed it is by the Court this 8th day of April 1907 ordered adjudged and decreed that said motion be and the same is hereby overruled.

JOB BARNARD, *Justice.*

Order Finally Ratifying and Confirming Verdict of the Jury.

Filed May 6, 1907.

In the Supreme Court of the District of Columbia, Holding a
District Court.

In re EXTENSION OF ELEVENTH STREET NORTHWEST, IN THE DIS-
TRICT OF COLUMBIA. No. 556, District Court.

Upon motion of the Commissioners of the District of Columbia, the petitioners in the above-entitled cause, it is by the Court, this 6th day of May, A. D. 1907, adjudged, ordered and decreed that the verdict and assessment of the jury returned and filed herein
on the 6th day of June, A. D. 1906, be, and the same is
14 hereby finally ratified and confirmed, in all respects, notwithstanding the objections and exceptions filed thereto, which
are hereby overruled.

By the Court.

JOB BARNARD, *Justice.*

Notation of Appeals and Order Fixing Bond for Costs.

Filed May 16, 1907.

In the Supreme Court of the District of Columbia, Holding a
District Court.*In re* EXTENSION OF 11TH ST. N. W. No. 556.

Now comes the Columbia Heights Realty Company, H. D. Bronson, George S. Cooper, Alice G. Holmead, Eugene J. Jeffries, Leo Simmons, Adams Monroe Mfg. Co., John W. Morris, Charles M. Carter, F. B. Brock, J. H. Sweeney, M. A. Bailey, (William H. Cowley, Melville D. Hensey) Trustees; Cora C. Behrens, H. F. Samstag and L. A. Samstag by their att'y and note an appeal in open Court to the Court of Appeals from the judgment or decree passed in this case on the 6th day of May, 1907 and prays the Court to fix the amount of bond for cost in each of said cases.

LEO SIMMONS,
Attorney for said Appellants.

15 The above appeals are allowed and a bond for cost is hereby fixed at one hundred dollars (\$100) for each party.
JOB BARNARD, *Justice.*

Memoranda.

May 16, 1907.—Appeal bonds approved and filed.

June 5, 1907.—Order extending time in which to settle exceptions and file Transcript of Record in Court of Appeals, to and including the 15th day of September, 1907.

June 14, 1907.—Order extending January Term, 1907, of District Court to the 15th day of January, 1908, for the purposes of this case.

Supreme Court of the District of Columbia.

THURSDAY, *August 15th*, 1907.Session resumed pursuant to adjournment, present presiding,
Justice Job Barnard.*In re* THE EXTENSION OF ELEVENTH STREET. No. 556, District
Court.

Now come here again Adams Munroe Manufacturing Company and others and tender to the Court their bill of exceptions
16 taken during the trial of this cause, and pray that the same may be duly signed and made part of the record, now for then, which is accordingly done.

17

Bill of Exceptions.

Filed August 15, 1907.

In the Supreme Court of the District of Columbia, Holding a
District Court.

In re THE EXTENSION OF 11TH ST. No. 556.

Joint Bill of Exceptions on behalf of Adams Monroe Manufacturing Company, Cora Behrends, L. A. and H. F. Samstag, J. H. Sweeney and M. A. Bailey, Melville D. Hensey and William H. Conley, trustees, Leo Simmons, and Charles M. Carter and John W. Morris.

Be it remembered that on the — day of February, 1906 the Counsel for the respondents appeared in Court and moved to strike out the amended and supplemental bill filed in this case on the 9th day of August, 1904, on the grounds that the said supplemental bill or petition was filed without authority of law and not in conformity to the order of March 4, 1904, and on the further grounds that if any suit was to be prosecuted under the act of June 6, 1900 it should be a new proceeding, which motion was overruled without prejudice.

And thereupon Counsel on the — day of February, 1906 again appeared in Court and renewed their motion to strike out the amended and supplemental bill on the grounds above mentioned and the Court overruled said motion and the Appellants excepted. The order overruling the said motion being as follows:

In re THE EXTENSION OF ELEVENTH STREET. No. 556.

Upon consideration of the motion to strike out the supplemental petition filed in this case on the 9th day of August, 1904 and the Court being of the opinion that the filing of said petition will not prejudice the rights of the property owners as to any defense they may desire to interpose, more so than if a new action had been instituted, and reserving to them the right to interpose such defense as they could have, had the suit been begun anew;
18 it is this 9th day of March, 1906 ordered that said motion be, and the same is hereby overruled.

From which order the petitioners appealed to the Court of Appeals.

Whereupon the appellants each filed and interposed the following plea:

In re EXTENSION OF ELEVENTH STREET NORTHWEST. No. 556.

Now comes Cora Behrends, owner of part of Lot 1 and all of lot 2, in Block 26, Columbia Heights and for plea to the supplemental

petition filed in this cause on the 9th day of August, 1904 says: that the cause or right of action in said petition set forth did not accrue within three years next before the filing of this suit or supplemental petition and this respondent pleads the same in bar to any recovery herein.

Now comes Adams Monroe Manufacturing Company owners of Sub-lots 46-47-50-51 in Block 14, Todd & Brown Subdivision and for plea to the supplemental petition filed in this cause on the 9th day of August, 1904 says: that the cause or right of action in said petition set forth did not accrue within three years next before the filing of this suit or supplemental petition and this respondent pleads the same in bar to any recovery herein.

Now comes L. A. & H. F. Samstag, owners of lot 25 in Block 25 and for plea to the supplemental petition filed in this cause on the 9th day of August, 1904 says: that the cause or right of action in said petition set forth did not accrue within three years next before the filing of this suit or supplemental petition and this respondent pleads the same in bar to any recovery herein.

19 Now comes J. H. Sweeney and M. A. Bailey, owners of lot 2 Block 21 Columbia Heights and part of lot 3, Block 47, Holmead Manor and for plea to the supplemental petition filed in this cause on the 9th day of August, 1904 says: that the cause or right of action in said petition set forth did not accrue within three years next before the filing of this suit or supplemental petition and this respondent pleads the same in bar of any recovery herein.

Now comes Melville D. Hensey and William H. Conley owners of lot- 43 to 48 in Block 20 and for plea to the supplemental petition filed in this cause on the 9th day of August, 1904 says: that the cause or right of action in said petition set forth did not accrue within three years next before the filing of this suit or supplemental petition and this respondent pleads the same in bar to any recovery herein.

Now comes Leo Simmons, owner of part of lot 5, Block 23, Columbia Heights and for plea to the supplemental petition filed in this cause on the 9th day of August, 1904 says: that the cause or right of action in said petition set forth did not accrue within three years next before the filing of this suit or supplemental petition and this respondent pleads the same in bar to any recovery herein.

Now comes Charles M. Carter, owner of East 53.16 feet front by the full depth of Lot 14, Block 22 and for plea to the supplemental petition filed in this cause on the 9th day of August, 1904 says: that the cause or right of action in said petition set forth did not accrue within three years next before the filing of this suit or supplemental petition and this respondent pleads the same in bar to any recovery herein.

20 And thereupon the following notice was sent by the Deputy Marshal of the District of Columbia to the men summoned as jurors.

UNITED STATES MARSHAL'S OFFICE,
WASHINGTON, D. C., *Feb. 9, 1906.*

IN THE MATTER OF THE EXTENSION OF ELEVENTH STREET. District
Court, No. 665.

Pursuant to an order of the Supreme Court of the District of Columbia made today in the above entitled case you are hereby summoned as one of the jury of seven judicious disinterested men, not related to any person interested in these proceedings, and not in the service or employment of the District of Columbia or of the United States, to be impaneled and sworn by the Court on the 16th day of February A. D. 1906, at ten o'clock A. M. to re-assess the benefits resulting from the extension of Eleventh Street in accordance with the provisions of an act of Congress approved June 6, A. D. 1900, entitled "An Act for the extension of Columbia Road east of 13th Street and for other purposes."

Very respectfully,

AULICK PALMER,
U. S. Marshal.

R.

And thereupon the following order was passed:

In the Supreme Court of the District of Columbia, Holding a
District Court.

IN THE MATTER OF THE EXTENSION OF ELEVENTH STREET NORTH-
WEST. No. 556, District Court.

21 The Marshal having summoned John E. Herrell, William A. H. Church, William V. Cox, James F. Oyster, Daniel Fraser, Edward Graves, and John H. Nolan, as a jury herein, as directed by an order heretofore passed herein, and the Court having excepted said jury as qualified, and having administered to them an oath in accordance with the provisions of an Act of Congress approved June 6, 1900, entitled "An Act for the extension of Columbia Road east of 13th Street, and for other purposes, it is by the Court this 16th day of February A. D. 1906, ordered, that the said jury view and examine the land which has been affected by the proceedings herein, and thereafter, at 2 o'clock P. M., on the 28th day of March 1906, and from time to time as they may determine, by adjournment, they shall, in the United States Court House, without the presence of the Court, hear and receive such evidence as may be offered or submitted to them on behalf of the District of Columbia and by any person or persons having any interest in these proceedings, touching the benefits and advantages which have accrued to the property by reason of the extension of 11th Street, Northwest, on a straight extension of the lines thereof, with a width of ninety feet, from Florida Avenue to Harvard Street,

and thence with the same width on a straight line to Lydecker avenue, joining said avenue with its center line opposite the center line of Eslin Avenue in the District of Columbia; and when said hearing is concluded said jury or a majority of them shall proceed to assess said benefits and return to the Court in writing, their verdict setting forth the lots, pieces or parcels of land which have been benefited by the extension of the said street as aforesaid and the amounts of the assessments for such benefits against the same, in accordance with the provisions of the aforesaid act of Congress approved June 6th, 1900.

By the Court,

JOB BARNARD, *Justice*.

22 At the time the above order was passed Counsel was not present and had no notice that such order would be passed other than the following notice:

Leo Simmons *et al.*, Attorneys for Respondent:

Please take notice, That the United States Marshal for the District of Columbia, by order of the Court, has summoned John E. Herrell, William A. H. Church, William V. Cox, James F. Oyster, Daniel Fraser, Edward Graves, and John H. Nolan, as a jury, to re-assess the benefits resulting from the extension of Eleventh Street, Northwest, in accordance with the provisions of the act of Congress approved June 6th, 1900 A. D., entitled "An Act for the extension of Columbia Road east of 13th Street, and for other purposes;" and that the Court (Mr. Justice Barnard) will be required to impanel and swear said jury at 10 o'clock A. M., on the 16th day of March A. D., 1906 in Criminal Court No. 2.

On the 16th day of March, 1906, William A. H. Church, James F. Oyster, Edward Graves, W. V. Cox, Daniel Fraser, John H. Nolan, and John E. Herrell, purporting to have been summoned as aforesaid appeared in said court and without having first examined said men or anyone or either of them as to the qualifications prescribed by the said act of June 6, 1900, the court administered the oath to said men that they would "assess the benefits accruing to the property abutting and adjacent to 11th Street extended according to the statute."

After said jury was so sworn, the Court not having done so, counsel for the appellant undertook to examine said jury as to their qualifications, but the Court refused to permit counsel to ask them any questions at all, to which ruling the appellant excepted.

And thereupon the Commissioners of the District of Columbia, through their counsel, prayed the Court to instruct the jury as follows:

23 "It is the duty of the jury to consider and assess the benefits which have resulted to the pieces or parcels of land on each side of Eleventh Street, Northwest, as extended from Florida Avenue to Lydecker Avenue, and the benefits which have resulted to any and all other pieces or parcels of land from the

extension; and in determining the amounts to be so assessed against said pieces or parcels of land, the jury shall take into consideration the respective situations of the said pieces or parcels of land, and the benefits they have severally received from said extension of said Eleventh Street. By *extension of the Street the jury are to understand its establishment, laying out, and completion for all the ordinary uses of a public thoroughfare, or Highway.*"

To the granting of which instructions the appellants objected upon the ground that the "extension" could not mean the completion of the street for all the ordinary purposes of a public highway. Said objection was overruled and the appellants excepted.

And thereupon the Court further instructed the jury as follows:

The jury are instructed that in ascertaining whether any benefit has accrued to any piece or parcel of land abutting upon or within the vicinity of Eleventh Street extended, they shall not take into consideration any benefit that they find which has accrued to the land in question subsequent to the extension of said street. Therefore, in order to levy an assessment for benefits against any piece or parcel of land abutting upon said street or adjacent thereto, the jury must find that the benefits upon which such assessment is based was brought about by the extension of said street, and not by any improvement made since it was extended, or by extension of car line in said Street.

No. 2. The jury is further instructed that they are not bound to levy any assessment whatever for benefits in this case, unless they find the property so assessed actually benefited by enhancement in value and that such benefit accrued immediately
24 from the extension of the street in question.

No. 3. And in establishing such benefits, in case they shall find any, they shall take into consideration the damage done to any piece or parcel of land abutting said street or adjacent thereto by reason of leaving the same above the established grade thereof; that is to say, if they should find any piece or parcel of land benefited by laying out and opening of said street, and shall also find that by reason of the grade of said street being fixed at a point much below the level of such ground, and that such ground by reason thereof, is left far above the said street grade, so as to cause damage on account of grading same, they shall take such grading into consideration, and if they find that the damage so sustained exceeds the benefits accruing, as formerly instructed, they shall not assess such piece or parcel of land at all; and in considering the benefits, and the damages caused by change of grade in extension of said street, the jury should take into consideration the amount allowed, if any, for damages by reason of such change of grade, by the former jury which assessed damages.

No. 4. The jury are instructed that they are not at liberty to levy any assessment against any piece or parcel of land abutting upon or adjacent to said Eleventh Street, unless they find such piece or parcel of land benefited by actual enhancement in value immediately upon the opening and extension of said street and in considering whether or not any piece or parcel of land has enhanced in value, they have

no right to consider any enhancement or increase in value that is the result of any special improvement made upon the street after it was opened and established, *as previously stated*; neither have
25 they the right to take into consideration any special improvement made upon any street crossing said Eleventh Street.

And thereupon the appellant prayed the Court to instruct the jury as follows:

1. The jury are instructed that in ascertaining whether or not any benefit has accrued to any piece of land abutting upon Eleventh Street extended, or in the vicinity thereof, they shall not take into consideration any benefit which they may find has accrued to such land subsequent to the laying out and establishing of said street. That is to say, that in levying assessments for benefits if the jury shall find any, they shall not take into consideration the grading or paving of the street, nor any improvements or street car facilities thereon subsequent to the laying out of the street. In other words the jury must find that the benefits upon which an assessment was based, was the direct result of laying out and establishing the street, and not the result of improvements since made, either in or upon the street itself, or abutting nearby lands.

Said jury is further instructed that

2. Such special improvements as water mains, sewers, curbs, gutters and sidewalks are usually assessed in other proceedings, and of course, any enhancement in value arising from that character of improvement and the macadamizing of the street in question, or any street crossing same should not be taken into consideration as a basis of benefit in this case.

3. The said jury is further instructed that in estimating what benefits, if any, have accrued to any piece or parcel of land abutting upon or adjacent to said Eleventh Street, they are not at
26 liberty to take into consideration any enhancement in value or benefit that has been given or accrued to such land by grading of such street nor macadamizing the roadway of same; nor have they the right to base their assessment for benefit upon any enhancement in value, if they find any, brought about by the laying of sidewalks, sewers, water-mains, gutters and curbs, that have been placed in or upon said street; their sole right to levy an assessment against any piece or parcel of land must be founded upon such benefits, if any, as have accrued to the land from the extension of the street only. And what is meant by the extension is the condemnation of the land for public use and locating said street by demarcations and boundaries and placing it upon the maps and plans of the District of Columbia, as a public highway.

4. The jury is instructed that what is meant by "benefits," is not such benefits as accrued to the public generally; but such benefits as will actually enhance the value of the property; and if from the evidence they find that any piece or parcel of land abutting upon said street or adjacent thereto has depreciated in value since the extension of said street, instead of enhancing it or increasing it in value, then they are not at liberty to levy any assessment against same.

5. The jurymen are further instructed that the burden is upon the petitioners, the commissioners of the District of Columbia, to satisfy you that any piece or parcel of land has been benefited by enhancement in value from the extension of said street. That every presumption of law growing out of their proceeding should be resolved in favor of the person whose land is liable to assessment. And therefore if any doubt should be met with, caused by reason of delay in prosecuting these proceedings, as to whether or not any piece or parcel of land was in fact benefited by the extension of said street and at the time it was extended, such doubt should be resolved in favor of such property owner and against the District of Columbia.

But the Court overruled and refused to give said instructions to the jury and the appellant by its counsel separately excepted to the **overruling of each instruction.**

And thereupon Counsel for the appellants soon after said jury was sworn, being informed that said jury had not been summoned and impaneled as required by law, filed a motion in said case praying the court to discharge the said jury which motion is in the following words:

27 *In re* EXTENSION OF 11TH STREET N. W. District Case,
No. 556.

"Now comes the parties represented of record by attorney, Leo Simmons, and moves the Court to discharge the jury from any further proceeding in the case, because said jury is illegally constituted, that the members of said jury were not selected and summoned as required by the law under which these proceedings are had."

This motion was overruled by the Court on the 31st day of March, 1906 and the appellants excepted.

And thereupon the paper purporting to be the verdict of the said jury was filed in said Court on the 6th day of June, 1906 in the following words:

In so far as it related to appellant's property.

In the Supreme Court of the District of Columbia, Holding a
District Court.

In re EXTENSION OF ELEVENTH STREET NORTHWEST, IN THE DIS-
TRICT OF COLUMBIA. District Cause, No. 556.

Verdict of Jury.

We, the undersigned, heretofore summoned accepted and sworn herein as a jury to assess the benefits which have accrued to property by reason of the extension of Eleventh Street, Northwest, on a straight extension of the lines thereof, with a width of ninety feet from Florida Avenue to Harvard —, and thence with the same width

and in a straight line to Lydecker Avenue, joining said avenue with its center line opposite the center line of Eslin Avenue, in the District of Columbia, in accordance with the provision of an act of Congress approved June 3, 1900, entitled, "An act for the extension of Columbia Road east of 13th Street, and other purposes," respectfully certify and show to the Court:—

That after being sworn by the Court of the proper performance of duties, we personally viewed and examined the land in the neighborhood of the said extension, with great care, and thereafter, at the United States Court House in the city of Washington, in the said District, on the 28th day of March A. D., 1906, at 2 o'clock P. M., and from time to time thereafter, pursuant to adjournment, after due notice to the persons interested therein, we met and heard and received such evidence as was offered and submitted to us on behalf of the District of Columbia and by persons interested, touching the benefits which have accrued to the property by reason of the extension of 11th Street, as aforesaid, and upon our personal view and examination aforesaid, and the evidence aforesaid, we find *that* the lots, pieces, or parcels of land mentioned, set forth and described in the following schedule; and we, the jury aforesaid, find that the several lots, pieces or parcels of land set forth and mentioned in said schedule have been benefited to the extent of the respective amounts set forth in the said schedule, and we hereby assess against the said lots, pieces or parcels of land respectively, as and for benefits aforesaid, the several amounts mentioned, specified and set forth in the said schedule.

Witness our hands and seals this sixth day of June A. D., 1906.

WILLIAM A. H. CHURCH.	[SEAL.]
JAMES F. OYSTER.	[SEAL.]
EDWARD GRAVES.	[SEAL.]
WILLIAM V. COX.	[SEAL.]
DANIEL FRASER.	[SEAL.]
JOHN H. NOLAN.	[SEAL.]

SCHEDULE.

Assessments for Benefits.

Against Lots in Block 14, Todd & Brown subdivision, resubdivided as lots 46 to 53, in County Book 18, p. 33, Surveyor's Office, D. C., as follows:

Against lot 46, Adams Monroe Manf. Co., owners, amount assessed as benefits	\$250.00
Against lot 47, Adams Monroe Manf. Co., owners, amount assessed as benefits	\$250.00
Against lot 50, Adams Monroe Manf. Co., owners, amount assessed as benefits	\$250.00
Against lot 51, Adams Monroe Manf. Co., owners, amount assessed as benefits	\$250.00

Against all that part of Lot 1, Block 26, not condemned for the extension of 11th Street, Cora Behrend, owner, amount assessed as benefits.....	\$750.00
Against all of lot 2, Block 26, Cora Behrend, owner, amount assessed as benefits.....	\$750.00
Against all of lot 25, Block 25, L. A. Samstag, owner, amount assessed as benefits.....	\$700.00
Against all that part of Lot 2, Block 21, not condemned for the extension of 11th Street, J. H. Sweeney and M. A. Bailey, owners, amount assessed as benefits.....	\$750.00
Against lot 43, M. D. Hensey, and W. H. Conley, Trustees, amount assessed as benefits.....	\$260.00
Against lot 44, M. D. Hensey, and W. H. Conley, Trustees, amount assessed as benefits.....	\$115.00
Against lot 45, M. D. Hensey, and W. H. Conley, Trustees, amount assessed as benefits.....	\$127.00
Against lot 46, M. D. Hensey, and W. H. Conley, Trustees, amount assessed as benefits.....	\$133.00
Against lot 47, M. D. Hensey, and W. H. Conley, Trustees, amount assessed as benefits.....	\$138.00
Against lot 48, M. D. Hensey, and W. H. Conley, Trustees, amount assessed as benefits.....	\$150.00
Against all that part of lot 5, Block 23, Columbia Heights, as by record in county book 6, p. 46, Surveyor's office, D. C., and described as follows: beginning at the Southwest corner of said lot 5, thence east 158.89 feet Eleventh Street; thence northwest along the line of Eleventh Street 147.10 feet to Columbia Road; thence southwest 131.94 feet to the west line of said lot 5 at a point 137.75 feet from the beginning; thence to point of beginning, Leo Simmons, owner, amount assessed as benefits	\$2000.00
Against the east 53.16 feet front by full depth of lot 14, Block 22, Columbia Heights, C. M. Carter, owner, amount assessed as benefits.....	\$750.00

30

Against parts of Lots 4 and 5, Block 23, Columbia Heights, as follows: Beginning at the northwest corner of said lot 4 as shown in County Book 6, p. 46, Surveyor's Office, D. C., thence south 39.54 feet to Columbia Road; thence North 37.02' East, to the west line of 11th Street; thence northwest along Eleventh Street 9.16 feet thence to place of beginning, J. W. Morris, owner, amount assessed as benefits.....	\$2000.00
Against all of lot 3, Block 15, J. W. Morris, owner, amount assessed as benefits.....	\$700.00
Against all that part of lot 4, Block 15, not condemned for the extension of 11th Street, J. W. Morris, owner, amount assessed as benefits.....	\$300.00

31 Thereupon on the 5th day of July, 1906 the appellants filed the following exceptions.

In the Supreme Court of the District of Columbia, Holding a District Court.

In re EXTENSION OF ELEVENTH STREET. No. 556.

Now comes Adams-Monroe Manufacturing Company, owner of lots 46, 47, 50 and 51 in Block 14, Todd and Brown's Subdivision, Columbia Heights, not waiving any plea or exception heretofore interposed or taken by it to the proceeding in said cause, and objects to the confirmation of the verdict returned in this case on June 6th, 1906 whereby the property of your respondent has been assessed for alleged benefits, and moves to vacate and quash same, for the following reasons:

First. Because this case has not been proceeded with in this Court in accordance with the opinion and mandate of the Court of Appeals, and this Court was without jurisdiction to proceed otherwise than as directed.

Second. Because the petitioners have taken and perfected in this case two appeals to the Court of Appeals from final orders passed herein, neither of which has been disposed of, and this Court was without jurisdiction to proceed in the matter pending said appeals.

Third. Because this respondent has interposed a plea of the Statute of Limitations in bar to any proceeding in the case, which plea is yet undisposed of, and the same should have been considered and sustained by the Court.

Fourth. Because the men constituting the said jury which returned said verdict were not selected and summoned as required by any law in relation to the proceedings, and your respondent before said verdict was returned, and as soon as the fact was known, moved to discharge said jury on the grounds named; said jury was therefore illegally constituted and the Court without jurisdiction to proceed in the matter, and therefore said verdict is void.

Fifth. Because said alleged jury was not sworn by the Court,

That they are not interested in any manner in the land to be assessed, nor in any way related to the parties interested therein; and that they will, without favor or partiality, to the best of their knowledge assess the benefits resulting from the extension of said Eleventh Street herein provided as required by the Statute; but said alleged jury was simply sworn "to assess benefits according to the Statutes" without any other words of qualifications, which oath did not advise them of the duty to be performed. Your respondent's counsel undertook to inquire of said jury if any one of them were interested in the property to be assessed or related to the parties interested therein, but the Court refused to allow any answer to said question, ruling that the question should have been asked before the jury was sworn; but as it was the duty of the Court to make such inquiry, respondent excepted to said ruling.

32 Sixth. Because of errors committed by the judge in giving instructions on behalf of the petitioners over the objection of your respondent, and, in refusing to grant certain instructions in behalf of your respondent, to all of which exceptions were duly sworn.

Seventh. Because the verdict as returned by the said alleged jury was wholly in disregard of the evidence and disregard of the instructions of the Court. And because said verdict is contrary to the evidence in the case, and is without regard to the rights of the respondent, and is wholly unjust and unreasonable. And because the said jury refused to admit competent evidence offered in behalf of this respondent, and admitting incompetent evidence in favor of the petitioners. And because said jury or certain members thereof secretly and without the authority of the Court ascertained the sums of the former jury in this case undertook to apportion against the property abutting said street, and the amounts so apportioned which was wholly irrelevant to the issues in this case, was thereby made known to said jury and they well knew it was not proper for them so to do.

Eighth. Because said verdict as returned was not prepared by the jury and because said jury did not return its verdict to the Court as required by law; and because said verdict is not signed by the jury as required by law.

Whereupon and by reason of the premises and because your respondent's property was not benefited as set forth in said verdict by the extension and opening of said street, he objects to the confirmation of said verdict and moves that the same be held void and of no effect and that such of the pleas as may appear to be well taken may be sustained and the cloud removed from his title.

Respondent prays leave to introduce in this case to be used in support of this motion and its exceptions, the transcribed notes of the evidence taken before — jury at its hearing; and to introduce such other evidence as may be found proper and competent to support the exceptions and questions of fact in relation to the several questions raised hereby.

33 In the Supreme Court of the District of Columbia, Holding a District Court.

In re EXTENSION OF ELEVENTH STREET. No. 556.

Now comes Cora Behrend, owner of Lot- 1, 2 and 22, in Block 26, Columbia Heights, not waiving any plea or exception heretofore interposed or taken by her to the proceeding in said cause, and objects to the confirmation of the verdict returned in this case on June 6th, 1906, whereby the property of your respondent has been assessed for alleged benefits, and moves to vacate and quash same, for the following reasons:

First. Because this case has not been proceeded with in this Court in accordance with the opinion and mandate of the Court of Ap-

peals, and this Court was without jurisdiction to proceed otherwise than as directed.

Second. Because the petitioners have taken and perfected in this case two appeals to the Court of Appeals from final orders passed herein, neither of which has been disposed of, and this Court was without jurisdiction to proceed in the matter pending said appeals.

Third. Because your respondent was not served with a notice as required by law, of the proceeding in this case.

Fourth. Because the men constituting the alleged jury which returned said verdict were not selected and summoned as required by law in relation to the proceedings, and said jury was therefore illegally constituted and the Court without jurisdiction to proceed in the matter, and therefore said verdict is void.

Fifth. Because said alleged jury were not sworn by the Court, That they are not interested in any manner in the land to be assessed, nor in any way related to the parties interested therein; and that they will, without favor or partiality, to the best of their knowledge assess the benefits resulting from the extension of said Eleventh Street herein provided, as required by the statute; but said alleged jury was simply sworn "to assess benefits according to the Statute" without any other words of qualification, which oath did not advise them of the duty to be performed.

Sixth. Because said jury was erroneously instructed by the Court as to what improvements should be considered in returning their verdict.

Seventh. Because the verdict as returned by said alleged jury was wholly in disregard of the evidence and disregard of the instructions of the Court. And because said verdict is contrary to the evidence in this case, and is without regard to the rights of the respondent, and is wholly unjust and unreasonable. And because said jury or certain members thereof secretly ascertained without authority of Court the sums the former jury in this case under-
34 took to apportion against the property abutting said street, and the amounts so apportioned (which was wholly irrelevant to the issues in this case) *was* thereby made known to said jury and they well knew it was not proper for them so to do.

Eighth. Because said verdict as returned was not prepared by the jury, and because said jury did not return its verdict to the Court as required by law; and because said verdict is not signed by the jury as required by law.

Wherefore and by reason of the premises and because your respondent's property was greatly damaged by the extension and opening of said street, she objects to the confirmation of said verdict and moves that the same be held void and of no effect.

Respondent prays leave to introduce in this case to be used in support of this motion and her exceptions, the transcribed notes of the evidence taken before said jury at the hearing; and to introduce such other evidence as may be found proper and competent to support the exceptions and questions of fact in relation to the several questions raised hereby.

35 In the Supreme Court of the District of Columbia, Holding a District Court.

In re EXTENSION OF ELEVENTH STREET. No. 556.

Now comes L. A. Samstag and H. F. Samstag, owners of lot- 22, 25, and 26 in Subdivision known as Columbia Heights, and objects to the confirmation of the verdict returned in this case on June 6th, 1906, whereby the property of your respondents has been assessed for alleged benefits and moves to vacate and quash same for the following reasons:

First. Because this case has not been proceeded with in this Court in accordance with the opinion and mandate of the Court of Appeals, and this Court was without jurisdiction than as directed.

Second. Because the petitioners have taken and perfected in this case two appeals to the Court of Appeals from final orders passed herein, neither of which has been disposed of, and this Court was without jurisdiction to proceed in the matter pending said appeals.

Third. Because the respondents have interposed a plea of the Statute of Limitations in bar to any proceeding in the case, which plea is yet undisposed of, and the same should have been considered and sustained by the Court.

Fourth. Because the men constituting the alleged jury which returned said verdict were not selected and summoned as required by any law in relation to the proceedings, and your respondents before the verdict of said jury was returned, and as soon as the fact was known, moved to discharge said jury on the grounds named; said jury was therefore illegally constituted and the Court without jurisdiction to proceed in the matter, and therefore said verdict is void.

Fifth. Because said alleged jury was not sworn by the Court, That they are not interested in any manner in the land to be assessed, or in any way related to the parties interested therein; and that they will, without favor or partiality, to the best of their knowledge assess the benefits resulting from the extension of said Eleventh Street herein provided, as required by statute; but said alleged jury was simply sworn "to assess benefits according to the Statute" without any other words of qualifications, which oath did not advise them of the duty to be performed. Your respondent's counsel undertook to inquire of said jury if any one of them *were* interested in the property to be assessed or related to the parties interested therein, but the Court refused to allow any answer to said question, ruling that the question should have been asked the jury before it was sworn;
36 but as it was the duty of the Court to make *to make* such inquiry, respondent excepted to said ruling.

Sixth. Because of errors committed by the Judge in giving instructions on behalf of the petitioners over the objection of your respondent, and, in refusing to grant certain instructions in behalf of your respondent, to all of which exceptions were duly taken.

Seventh. Because the verdict as returned by the said alleged jury was wholly in disregard of the evidence and disregard of the instruc-

Fourth. Because the men constituting the alleged jury which returned said verdict were not selected and summoned as required by any law in relation to the proceedings, and your respondents before the verdict of said jury was returned, and as soon as the fact was known, moved to discharge said jury on the grounds named; said jury was therefore illegally constituted and the Court without jurisdiction to proceed in the matter, and therefore said verdict is void.

Fifth. Because said alleged jury was not sworn by the Court, That they are not interested in any manner in the land to be assessed, or in any way related to the parties interested therein; and that they will, without favor or partiality, to the best of their knowledge assess the benefits resulting from the extension of said Eleventh Street, herein provided, as required by statute; but said alleged jury was simply sworn "to assess benefits according to the Statute" without any other words of qualification, which oath did not advise them of the duty to be performed. Your respondent's counsel undertook to inquire of said jury if any one of them *were* interested in the property to be assessed or related to the parties interested therein, but the Court refused to allow any answer to said question, ruling that the question should have been asked the jury before it was
38 sworn; but as it was the duty of the Court to make *to make* such inquiry, respondent excepted to said ruling.

Sixth. Because of errors committed by the Judge in giving instructions on behalf of the petitioners over the objection of your respondent, and in refusing to grant certain instructions in behalf of your respondent, to all of which exceptions were duly taken.

Seventh. Because the verdict as returned by the said alleged jury was wholly in disregard of the evidence and disregard of the instructions of the Court. And because said verdict is contrary to the evidence in the case, and is without regard to the rights of the respondent, and is wholly unjust and unreasonable. And because the said jury refused to admit competent evidence offered in behalf of this respondent and admitting incompetent evidence in favor of the petitioners. And because said jury or certain members thereof secretly and without the authority of the Court ascertained the sums of the former jury in this case undertook to apportion against the property abutting said street, and the amounts so apportioned which was wholly irrelevant to the issues in this case, *was* thereby made known to said jury and they well knew it was not proper for them so to do.

Eighth. Because said verdict as returned was not prepared by the jury and because said jury did not return its verdict to the Court as required by law; and because said verdict is not signed by the jury as required by law.

Wherefore and by reason of the premises and because your respondent's property was not benefited as set forth in said verdict by the extension of 11th Street, he objects to the confirmation of said verdict and moves that the same be held void and of no effect and that such of the pleas as may appear to be well taken may be sustained and the cloud removed from the title.

Respondent prays leave to introduce in this case to be used in

support of this motion and its exceptions, the transcribed notes of the evidence taken before said jury at its hearing; and to introduce such other evidence as may be found proper and competent to support the exceptions and questions of fact in relation to the several questions raised hereby.

39 In the Supreme Court of the District of Columbia, Holding
a District Court.

In re EXTENSION OF ELEVENTH STREET. No. 556.

Now comes Melville D. Hensey and William H. Conley, owners of Lot- 43 to 48 in Block 20, Columbia Heights, not waiving any plea or exception heretofore interposed or taken by *him* to the proceeding in said cause, and objects to the confirmation of the verdict returned in this case, June 6th, 1906, whereby the property of your respondent- has been assessed for alleged benefits, and moves to vacate and quash same, for the following reasons:

First. Because this case has not been proceeded with in this Court in accordance with the opinion and mandate of the Court of Appeals, and this Court was without jurisdiction to proceed otherwise than as directed.

Second. Because the petitioners have taken and perfected in this case two appeals to the Court of Appeals from final orders passed herein, neither of which has been disposed of, and this Court was without jurisdiction to proceed in the matter pending said appeals.

Third. Because *this* respondent- *has* interposed a plea of the Statute of Limitations in bar to any proceeding in the case, which plea is yet undisposed of, and the same should have been considered and sustained by — Court.

Fourth. Because the men constituting the alleged jury which returned said verdict were not selected and summoned as required by any law in relation to the proceedings, and your respondent- before said verdict was returned, and as soon as the fact was known, moved to discharge said jury on the grounds named; said jury was therefore illegally constituted and the Court without jurisdiction in the matter, and therefore said verdict is void.

Fifth. Because said alleged jury was not sworn by the Court, That they are not interested in any manner in the land to be assessed, nor in any way related to the parties interested therein; and that they will, without favor or partiality to the best of their knowledge assess the benefits resulting from the extension of said Eleventh Street herein provided, as required by statute; but said alleged jury was simply sworn "to assess benefits according to the statutes" without any other words of qualification, which oath did not advise them of the duty to be performed. Your respondents' counsel undertook to inquire of said jury if any one of them *were* interested in the property to be assessed or related to the parties interested therein, but the Court refused to allow any answer to said question, ruling that the question should have been asked before the jury was sworn;

but as it was the duty of the Court to make such inquiry, respondent-
excepted to said ruling.

40 Sixth. Because of errors committed by the Judge in giving instructions on behalf of the petitioners over the objection of your respondent-, and, in refusing to grant certain instructions in behalf of your respondent-, to all of which exceptions were duly sworn.

Seventh. Because the verdict as returned by the said alleged jury was wholly in disregard of the evidence and disregard of the instructions of the Court. And because said verdict is contrary to evidence in the case, and is without regard to the rights of the respondent, and is wholly unjust and unreasonable. And because the said jury refused to admit competent evidence offered in behalf of this- respondent-, and admitting incompetent evidence in favor of the petitioners. And because said jury or certain members thereof secretly and without the authority of the Court ascertained the sums of the former jury in this case undertook to apportion against the property abutting said street, and the amounts so apportioned which was wholly irrelevant to the issues in this case, were thereby made known to said jury and they well knew it was not proper for them so to do.

Eighth. Because said verdict as returned was not prepared by the jury and because said jury did not return its verdict to the Court as required by law; and because said verdict is not signed by the jury as required by law.

Wherefore and by reason of the premises and because your respondents' property was not benefited as set forth in said verdict by the extension and opening of said street, *it* objects to the confirmation of said verdict and moves that the same be held void and of no effect and that such of the pleas as may appear to be well taken may be sustained and the cloud removed from *his* title.

Respondent- prays leave to introduce in this case to be used in support of this motion and its exceptions, the transcribed notes of the evidence taken before said jury at its hearing; and to introduce such evidence as may be found proper and competent to support the exceptions and questions of fact in relation to the several questions raised hereby.

41 In the Supreme Court of the District of Columbia, Holding
a District Court.

In re EXTENSION OF ELEVENTH STREET. No. 556.

Now comes Leo Simmons, owner of part of Lot 5, Block 23, Columbia Heights, described as follows: Beginning at the southwest corner of said lot 5; thence east 158.89 feet to Eleventh Street; thence northwest along the west line of Eleventh Street 147.10 *street* to Columbia Road; thence southwest 131.94 feet to the west line of said lot 5 at a point 137.75 feet from the beginning; thence to point of beginning, not waiving any plea or exception heretofore interposed or taken by him to the proceedings in said cause, and

objects to the confirmation of the verdict returned in this case on June 6th, 1906, whereby the property of your respondent has been assessed for alleged benefits, and moves to vacate and quash same, for the following reasons:

First. Because this case has not been proceeded with in this Court in accordance with the opinion and mandate of the Court of Appeals, and this Court was without jurisdiction to proceed otherwise than as directed.

Second. Because the petitioners have taken and perfected in this case two appeals to the Court of Appeals from final orders passed herein, neither of which has been disposed of, and this Court was without jurisdiction to proceed in the matter pending said appeals.

Third. Because this respondent has interposed a plea of the Statute of Limitations in bar to any proceeding in the case, which plea is yet undisposed of, and the same should have been sustained and considered by the Court.

Fourth. Because the men constituting the alleged jury which returned said verdict were not selected and summoned as required by law in relation to the proceedings, and your respondent before said verdict was returned, and as soon as the fact was known, moved to discharge said jury on the grounds named; said jury was therefore illegally constituted and the Court without jurisdiction to proceed in the matter, and therefore said verdict is void.

Fifth. Because said alleged jury was not sworn by the Court, that they are not interested in any manner in the land to be assessed, nor in any way related to the parties interested therein; and that they will, without favor or partiality, to the best of their knowledge assess the benefits resulting from the extension of said street herein provided, as required by the Statute; but said alleged jury was simply sworn "to assess benefits according to the Statutes" without

42 any other words of qualification, which oath did not advise them of the duty to be performed. Your respondent undertook to inquire of said jury if any one of them *were* interested in the property to be assessed or related to the parties interested therein, but the Court refused to allow any answer to said question, ruling that the question should have been asked the jury before being sworn; but as it was the duty of the Court to *amke* such inquiry respondent excepted to said ruling.

Sixth. Because of errors committed by the judge in giving instructions on behalf of the petitioners over the objection of your respondent, and, in refusing to grant certain instructions in behalf of your respondent, to all of which exceptions were duly taken.

Seventh. Because the verdict as returned by the said alleged jury was wholly in disregard of the evidence and disregard of the instructions of the Court. And because said verdict is contrary to the evidence in the case, and is without regard to the rights of the respondent, and is wholly unjust and unreasonable.

Eighth. Because the said jury refused to admit competent evidence offered in behalf of this respondent and admitting incompetent evidence in favor of the petitioners; and because said jury or certain members thereof secretly and without the authority of the

Court ascertained the sums the former jury in this case undertook to apportion against the property abutting said street and the amounts so apportioned, which was wholly irrelevant to the issue in this case, was thereby made known to said jury and they well knew it was not proper for them so to do.

Ninth. Because said verdict as returned was not prepared by the jury and because said jury did not return its verdict to the Court as required by law; and because said verdict is not signed by the jury as required by law.

Tenth. Because respondent further shows that said piece of land herein described was assessed for alleged benefits by a former jury for the opening of Columbia Road to the extent of \$3630.00. That other assessments have been levied against same for special improvements amounting to near \$600. in addition thereto. That by reason of the extension and cutting through of said 11th Street, respondent's property was left far above the grade to wit; 18 ft. and which has entailed an expense of over \$6000. to grade same, in order that it might be used for building purposes. That in addition to grading said lot it was also necessary for respondent to have that portion of the street not occupied as the road bed and for the car line to be graded at an expense of over \$900. That the amount heretofore levied against said land, the cost of grading, and the amount now proposed to be taxed against same, far exceeds its value and if said assessment is confirmed will act as a practical confiscation of respondent's property.

Therefore and by reason of the premises and because your respondent's property was greatly damaged instead of benefited by the extension and opening of said street, he objects to the confirmation of the said verdict and moves that the same be held void and of no effect and that such of the pleas as may appear to be well taken may be sustained and the cloud removed from his title.

43 In the Supreme Court of the District of Columbia, Holding a
 District Court.

In re EXTENSION OF ELEVENTH STREET. No. 556.

Now comes C. M. Carter, owner of part of Lot 14, in Block 23, Columbia Heights, not waiving any plea or exception heretofore interposed or taken by him to the proceeding in said cause, and objects to the confirmation of the verdict returned in this case on June 6th, 1906, whereby the property of your respondent has been assessed for alleged benefits, and moves to vacate and quash same, for the following reasons:

First. Because this case has not been proceeded with in this Court in accordance with the opinion and mandate of the Court of Appeals, and this Court was without jurisdiction to proceed otherwise than as directed.

Second. Because the petitioners have taken and perfected in this case two appeals to the Court of Appeals from final orders passed

herein, neither of which has been disposed of, and this Court was without jurisdiction to proceed in the matter pending said appeals.

Third. Because this respondent has interposed a plea of the Statute of Limitations in bar to any proceeding in the case, which plea is yet undisposed of, and the same should have been considered and sustained by Court.

Fourth. Because the men constituting the alleged jury which returned said verdict were not selected and summoned as required by any law in relation to the proceedings, and your respondent before said verdict was returned, and as soon as the fact was known, moved to discharge said jury on the grounds named; said jury was therefore illegally constituted and the Court without jurisdiction in the matter, and therefore said verdict is void.

Fifth. Because said alleged jury was not sworn by the Court, That they are not interested in any manner in the land to be assessed, nor in any way related to the parties interested therein; and that they will, without favor or partiality to the best of their knowledge assess the benefits resulting from the extension of said Eleventh Street herein provided, as required by statute; but said alleged jury was simply sworn "to assess benefits according to the statutes" without any other words of qualification, which oath did not advise them of the duty to be performed. Your respondent's counsel undertook to inquire of said jury if any one of them were interested in the property to be assessed or related to the parties interested therein, but the Court refused to allow any answer to said question, ruling that the question should have been asked before the jury was sworn; but as it was the duty of the Court to *amke* such inquiry, respondent excepted to said ruling.

44 Sixth. Because of errors committed by the Judge in giving instructions on behalf of the petitioners over the objection of your respondent, and, in refusing to grant certain instructions in behalf of your respondent, to all of which exceptions were duly sworn.

Seventh. Because the verdict as returned by the said alleged jury was wholly in disregard of the evidence and disregard of the instructions of the Court. And because said verdict is contrary to evidence in the case, and is without regard to the rights of the respondent, and is wholly unjust and unreasonable. And because the said jury refused to admit competent evidence offered in behalf of this respondent, and admitting incompetent evidence in favor of the petitioners. And because said jury or certain members thereof secretly and without the authority of the Court ascertained the sums of the former jury in this case undertook to apportion against the property abutting said street, and the amount so apportioned which was wholly irrelevant to the issues in this case, were thereby made known to said jury and they well knew it was not proper for them so to do.

Eighth. Because said verdict as returned was not prepared by the jury and because said jury did not return its verdict to the Court as required by law; and because said verdict is not signed by the jury as required by law.

Wherefore and by reason of the premises and because your re-

spondent's property was not benefited as set forth in said verdict by the extension and opening of said street, it objects to the confirmation of said verdict and moves that the same be held void and of no effect and that such of the pleas as may appear to be well taken may be sustained and the cloud removed from his title.

Respondent prays leave to introduce in this case to be used in support of this motion and its exceptions, the transcribed notes of the evidence taken before said jury at its hearing; and to introduce such evidence as may be found proper and competent to support the exceptions and questions of fact in relation to the several questions raised hereby.

45 In the Supreme Court of the District of Columbia, Holding
a District Court.

In re EXTENSION OF ELEVENTH STREET. No. 556.

Now comes John W. Morris, owner of part of lots 4 and 5 in Block 23, Columbia Heights, described as follows: Beginning at the Northwest corner of said lot 4 as shown in County book 6, p. 46; Surveyor's Office, D. C., thence south 39/64 feet to Columbia Road; thence north 37.02 feet east, to the west line of Eleventh Street; thence northwest along Eleventh Street 9.16 feet, thence to the place of beginning; also lots 3 and part of lot 4 in Block 15, and objects to the confirmation of the verdict returned in this case on June 6th, 1906, whereby the property of your respondent has been assessed for alleged benefits, and moves to vacate and quash same, for the following reasons:

First. Because this case has not been proceeded with in this Court in accordance with the opinion and mandate of the Court of Appeals, and this Court was without jurisdiction to proceed otherwise than as directed.

Second. Because the petitioners have taken and perfected in this case two appeals to the Court of Appeals from final orders passed herein, neither of which has been disposed of, and this court was without jurisdiction to proceed in the matter pending said appeals.

Third. Because your respondent was not served with a notice as required by law of the proceedings in this case.

Fourth. Because the whole of that part of respondent's property situated in Block 23 of Columbia Heights is not within the area fixed by the Statute for assessing benefits in this case; and because said strip of land described as set forth herein and in said verdict, cannot be used for any building purposes whatever and is practically left worthless by the extension of other streets; and because the verdict of said jury assessed the said piece of property as a whole, and as part of same was not within the assessing area, the whole assessment is void for want of certainty. And respondent further shows unto the court that said pieces of land in Block 23 has been assessed for benefits on account of the extension of Columbia Road to the extent of \$1080 which he has paid.

Fifth. Because the men constituting the alleged jury which returned said verdict were not selected and summoned as required by law in relation to the proceedings and said jury was therefore illegally constituted and the Court without jurisdiction to proceed in the matter, and therefore said verdict is void.

Sixth. Because said alleged jury were not sworn by the Court, That they are not interested in any way in the land to be assessed nor in any — related to the parties interested therein; and that they will without favor or partiality, to the best of their knowledge assess the benefits resulting from the extension of said street
46 provide- herein, as required by the statute; but said alleged jury was simply sworn "to assess benefits according to the statute" without any other words of qualification, which oath did not advise them of the duty to be performed.

Seventh. Because said jury were erroneously instructed by the Court as to what improvements should be considered in returning their verdict.

Eighth. Because the verdict as returned by said alleged jury was wholly in disregard of the evidence and disregard of the instructions of the Court. And because said verdict is contrary to the evidence in the case, and is without regard to the rights of the respondent, and is wholly unjust and unreasonable. And because said jury or certain members thereof secretly and without the authority of the Court ascertained the sums the former jury in this case undertook to apportion against the property abutting said street, and the amounts so apportioned (which was wholly irrelevant to the issues in this case) was thereby made known to said jury and they well knew it was not proper for them so to do.

Ninth. Because said verdict as returned was not prepared by the jury, and because said jury did not return its verdict to the Court as required by law; and because said verdict is not signed by the jury as required by the Court.

Wherefore and by reason of the premises and because your respondent's property was not in the slightest benefited by the extension and opening of said street, he objects to the confirmation of said verdict and moves that the same may be held void and of no effect.

Respondent prays leave to introduce into this case to be used in support of this motion and his exceptions, the transcribed notes of the evidence taken before the said jury at the hearing; and to introduce such other evidence as may be found proper and competent to support the exceptions and questions of fact in relation to the several questions raised hereby.

47 Before the time fixed for the hearing of the said exception and objection and the motion by the District of Columbia to confirm the verdict of the said jury, the appellant filed 17 affidavits, the first by Robert E. Bradley as follows:

DISTRICT OF COLUMBIA, ss:

Personally appeared Robert E. Bradley and being duly sworn, says that he is a resident of the District of Columbia, and has been

engaged in business as a real estate broker, making sales of property and loans on same in all parts of the said district, especially in the subdivision known as Columbia Heights and property adjacent thereto, for the past 20 years.

That for the past 6 or 8 years land values in said section have greatly depreciated; yet for the past ten years the property in the subdivision has been rapidly developed by the erection of houses, improvements of streets, etc. That owing to the continued building operations which have been going on in the subdivision, and the great change in said section, caused thereby, and on account of the improvements of the cross streets in said neighborhood and the extension of the car line out 11th Street; that in his opinion it would be absolutely impossible for any human being to calculate now or any part of the years 1905 or 1906, with any degree of accuracy, to what extent if any the laying or extending of said 11th Street has benefited the land abutting the said street, or any property in its vicinity. That any sum levied upon said property within the last year, which required a calculation of such benefits, must necessarily have been guess work.

R. E. BRADLEY.

Subscribed and sworn to before me this 22nd day of January, 1907.

48	James E. Ellerson, who had been engaged in business	12 yrs.
	William S. Minnix, " " " "	10 "
	Phelan C. Hawn, of the firm of Lieberman & Hawn	12 "
	Victor Anderson, who had been engaged in business,	10 "
	James S. Lampton, " " "	10 "
	L. S. Lipscomb, " " "	10 "
	Frank T. Rawlings, " " "	20 "
	A. T. Hensey, " " "	15 "
	George Henderson, " " "	20 "
	S. M. Jones, " " "	20 "
	H. Clay Stewart, " " "	20 "
	H. Rozier Dulaney, " " "	15 "
	W. S. Rust, " " "	15 "
	Charles P. Stone, Pres. Stone & Fairfax R. E. Co.	18 "
	William A. Hill, Pres. Moore & Hill R. E. Co.	12 "
	W. H. Saunders, prop. W. H. Saunders R. E. Co.	16 "

All of whom made affidavits similar to the one made by the said Robert E. Bradley, aforesaid, excepting that the time they had been engaged in business varied as above stated.

And thereupon on the morning of the hearing of the exceptions and motion to confirm as aforesaid, the appellants summoned and produced the aforesaid jurymen who sat in said case and support of his motion to vacate the verdict, offered to prove by the members of said jury that the verdict of said jury was made up from notes made by the said jury and handed to the Corporation Counsel;

that the paper purporting to be said verdict was prepared in the office of the corporation Counsel and not by the jury and that it was handed back to the jury and signed by them without any reference to their notes and without comparing the same to their notes.

Counsel further proposed to show by members of the said jury that neither of them had been summoned by the United States Marshal and that they had not been interrogated and asked questions whether or not they were employed by the District of Columbia or the United States or were interested in the property to be assessed or related to any one interested at the time. The Court refused to allow any one of said jurors to be sworn or examined in relation to

the facts set forth, or allow the appellants to prove said facts
49 by said jurors and the appellants by their counsel excepted to said ruling.

And thereupon the court having refused to permit the counsel to interrogate said jurors and at the Court's suggestion the following affidavit was sworn to and filed in the case.

In the Supreme Court of the District of Columbia.

In re EXTENSION OF ELEVENTH STREET. District Court, No. 556.

William B. Robison, being duly sworn, deposes and says that he is the chief Deputy Marshal for the District of Columbia, and that several weeks before the receiving of the order from the Supreme Court of the District of Columbia to summons a jury to assess the benefits in the extension of 11th Street, which order was passed on the 9th day of February, 1906, he had frequent conferences with the Marshal as to the composition of said jury, and together with the Marshal canvassed some 25 or 30 names some of which names were suggested by him and some by the Marshal; as a result of these frequent conferences on the subject the following men were finally selected by the Marshal to constitute said jury: John E. Herrell, W. A. H. Church, James F. Oyster, Daniel Fraser, William V. Cox, John H. Nolan and Edward Graves. While it is true that the jurors aforesaid were finally selected by the Marshal from the entire list under consideration affiant cannot at this time say which of said names were suggested by him and which by the Marshal although he is satisfied some of these names were names submitted to the Marshal's consideration by him; affiant states that the form of summons used to notify said jurors of their selection was framed by the affiant, and the Marshal's name was signed to said summons by the affiant; the affiant also says that the said summons were served upon the aforesaid jurors by the various deputy Marshals in accordance with the practice of the Marshal's office in common law
50 cases.

WILLIAM B. ROBISON,
Chief Deputy Marshal.

Subscribed and sworn to before me this 31st day of January, 1907.

J. R. YOUNG, *Clerk,*
By F. C. CUNNINGHAM,
Ass't Clerk Supreme Court, District of Columbia.

The foregoing substance of the testimony taken before the said jury was abstracted by the appellant from the testimony filed as an affidavit in the case by order of the Court. After the Counsel had argued the case upon the propositions of the law raised by the exceptions, counsel for the appellant, in support of its motions and exceptions, offered to read to the Court the said testimony but the Court declined to hear the same or consider it at the time, in full, Counsel saying, that it would be his purpose to consider the same if the Court found after consideration, the propositions of the law were against the appellant. But the Counsel had no further opportunity to argue said case on the evidence and without reading said evidence or hearing it fully read, the Court passed an order overruling all the exceptions, and confirming said verdict and refusing to consider said testimony any further, and the appellant excepted.

And thereupon the appellants presented to the Court, the justice that presided at the hearing in this case and made the rulings herein referred to, this their bill of exceptions, containing the proceedings before the Court and the affidavits filed in the case as herein
51 referred to with the exceptions as therein noted which were duly taken by the appellants separately in the order in which they appear, and allowed by the Court at the time.

And the said appellants by their counsel pray the Court to sign and seal this their bill of exceptions and make the same a part of the record in this case, which is now accordingly done and the said bill of exceptions is here now signed and sealed in due form and made a part of the record in this case this 15th day of August, 1907, *nunc pro tunc*.

JOB BARNARD, *Justice*.

52 *Stipulation as to Record on Appeal.*

Filed August 30, 1907.

In the Supreme Court of the District of Columbia, Holding a District Court.

In re EXTENSION OF ELEVENTH STREET. District Case, No. 556.

It is hereby agreed between Counsel for the appellants in the appeal of the Adams Monroe Manufacturing Company, *et al.*, and the counsel for the petitioners, that the map filed with the original petition and the map filed with the second jury of seven on the 16th day of April, 1906, also the opinion of the Court in relation to the exceptions to the verdict of the second jury, which maps and opinion have been incorporated in the record on the separate appeal of the Columbia Heights Realty Company, in this case, shall be omitted from the record in the appeal taken by the said Adams Monroe Manufacturing Company, *et al.*, and that the said maps and opinion incorporated in the record in the separate appeal of the Columbia Heights Realty Company shall be referred to and used in the hearing

in the Court of Appeals in the appeal of the said Adams Monroe Manufacturing Company, *et al.*, with the same force and effect as if they had been incorporated into the record herein.

LEO SIMMONS,
Att'y for Appellants.

O. K.

J. F. SMITH,
Ass't Corporation Counsel.

53 *Directions to Clerk for Preparation of Transcript of Record.*

Filed August 30, 1907.

In the Supreme Court of the District of Columbia, Holding a District Court.

In re EXTENSION OF ELEVENTH STREET. District Case, No. 556.

John R. Young Clerk:

You will please prepare the record for the Adams Monroe Manufacturing Company, Cora Behrends, L. A. and H. F. Samstag, J. H. Sweeney and M. A. Bailey, Melville D. Hensey and William H. Cronley, trustees; Leo Simmons and Charles M. Carter, John W. Morris and Alice G. Holmead, for their appeal in this case and in doing so you will include the following papers which shall constitute the record on said appeal.

1. Original petition of John B. Wight, *et al.*
2. Memoranda: Verdict of the jury filed in the case on the 20th day of February, 1900.
3. The decree passed on the third day of July, 1900 confirming the awards and vacating the assessments.
4. Notation of appeal by the petitioners to the Court of Appeals.
5. Mandate of the Court of Appeals filed July 22, 1903.
- 54 6. Order passed March 4, 1904, denying motion of petitioners for confirmation of assessments.
7. Order passed June 17, 1904, directing proceedings under act of June 6, 1900.
8. Motion for dismissal of suit, in relation to order of June 17, 1904, by Abner Greenleaf, *et al.*, found in the papers in the case and not marked filed.
9. Affidavit of Leo Simmons with a letter of Justice Gould attached.
10. Amended and supplemental petition filed in the case the 9th day of August, 1904.
11. Order of publication passed on the 27th day of October, 1904.
- 11½. Memoranda Verdict of Jury of Seven.
12. Order June 6, 1907, overruling exceptions and confirming the verdict.
13. Notation of appeal and order fixing bond of each appellant.
14. Appeal bonds approved as to each appellant.
15. Order extending time for settling bill of exceptions.
16. Order extending the term.

17. Bill of exceptions and order making same part of the record.

18. Motion of Alice G. Holmead to vacate the verdict.

19. Order overruling same.

Appeal by Alice G. Holmead and order approving bond.

55 20. Stipulation of Counsel as to maps and opinion of Court.

LEO SIMMONS,
Att'y for Appellant.

Order Extending Time, &c.

Filed September 12, 1907.

In the Supreme Court of the District of Columbia, Holding a District Court.

In re EXTENSION OF ELEVENTH STREET. District Case, No. 556.

On motion of the Adams Monroe Manufacturing Company, Cora Behrends, L. A. and H. F. Samstag, J. H. Sweeney and M. A. Bailey, Melville D. Hensey and William H. Conley, Trustees, Leo Simmons, Charles M. Carter, John W. Morris, and Alice G. Holmead, it is this 12th day of September, 1907, Ordered that the time for the filing of the record on the appeal in this case, in the Court of Appeals, be, and the same is hereby, extended to and including the 1st day of November, 1907; and it is further ordered that the above named appellants be and they are hereby allowed to prosecute a joint appeal as among themselves, but separate appeal as to all other respondents in said cause.

ASHLEY M. GOULD, *Justice.*

56 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 55, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 556, District Court Docket, In the Matter of the Extension of Eleventh Street, Northwest, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 31st day of October, A. D. 1907.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1841. Adams Monroe Manufacturing Company *et al.*, appellants, *vs.* Henry B. F. Macfarland *et al.* Court of Appeals, District of Columbia. Filed Oct. 31, 1907. Henry W. Hodges, clerk.

6—1841A

OCT. 5 - 1910

Henry W. Hodgson
W. H. H.

IN THE
Court of Appeals, District of Columbia.

OCTOBER TERM, 1908.

No. 1841.

ADAMS, MONROE MANUFACTURING COMPANY,
CORA BEHREND, L. A. SAMSTAG, H. F. SAMSTAG
ET AL., APPELLANTS,

vs.

HENRY B. F. MACFARLAND, HENRY L. WEST, AND
CHESTER HARDING (ACTING), COMMISSIONERS OF
THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEES.

EDWARD H. THOMAS,
JAS. FRANCIS SMITH,
Attorneys for Appellees.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C.

IN THE
Court of Appeals, District of Columbia.

OCTOBER TERM, 1908.

No. 1841.

ADAMS MONROE MANUFACTURING COMPANY,
CORA BEHREND, L. A. SAMSTAG, H. F. SAMSTAG
ET AL., APPELLANTS,

vs.

HENRY B. F. MACFARLAND, HENRY L. WEST, AND
CHESTER HARDING (ACTING), COMMISSIONERS OF
THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEES.

STATEMENT OF CASE.

This is an appeal by the Adams Monroe Manufacturing Company, Cora Behrends, Leo Simmons, and the other appellants herein, from a decree of the Supreme Court of the District of Columbia, overruling the exceptions of the appellants to the verdict of the jury in the matter of the reassessments of benefits from the extension of Eleventh street, and confirming the said verdict.

The extension of Eleventh street involved in these proceedings was provided for in the act of Congress approved March 3, 1899, which directed that not less than one-half of the total sum awarded for the land necessary for the extension of the street should be assessed by the jury as benefits against the land abutting on the street to be opened to a depth of two hundred feet from the building line of said street and directed further that proceedings should be had in accordance with the provisions of Section 11 of the Revised Statutes of the District of Columbia. The jury summoned under this act assessed upon the abutting property one-half of the total sum of their awards in accordance with the provisions of the law. On objections filed by the property owners, the assessments were set aside as invalid, the court holding that the provision of the law requiring an arbitrary assessment of one-half the sum of the awards was unconstitutional. In the meantime, on June 6, 1900, Congress passed an act providing that if for any reason the Eleventh street assessments should be declared invalid proceedings for re-assessment should be had in accordance with the provisions therein contained, the main distinction between the act of June 6, 1900, and that of March 3, 1899, being, that the jury were allowed unrestricted latitude and discretion both as to the amount of the assessment and of the territory to be assessed.

The Commissioners of the District of Columbia appealed from the decree of the Supreme Court of the District, declaring the assessments returned by the first jury invalid, with the result that this court reversed the order of the lower court setting aside the assessments as unconstitutional, but held further that the objections of the appellants amounted to an expression of dissatisfaction which entitled them at their option to a second jury.

The cause coming back to the Supreme Court of the District of Columbia, the cause was proceeded with to a ver-

dict of re-assessment in accordance with the provisions of the act of June 6, 1900.

Exceptions were filed to the confirmation of this verdict by the appellants, based upon the following grounds:

1st. Because this case had not been proceeded with, in this court, in accordance with the opinion and mandate of the Court of Appeals (*Byrnes vs. Macfarland*, 20 App., p. —), and this court was without jurisdiction to proceed otherwise than as directed.

2d. Because the petitioners had taken and perfected in this case two appeals to the Court of Appeals from the final orders passed herein, neither of which has been disposed of, and this court was without jurisdiction to proceed in the matter pending said appeal.

3d. Because of the plea of the Statute of Limitations interposed by the appellants.

4th. Because the jury was not summoned according to law.

5th. Because the jury was not sworn by the court that they were not interested in the land that they assessed, and because counsel for the appellants was not allowed to interrogate the jury after they were sworn.

6th. Because of errors committed by the trial judge in granting instructions on behalf of the petitioners, and in refusing to grant certain instructions in behalf of the appellants.

7th. Because the verdict of the jury was unreasonable and contrary to the evidence.

8th. Because said verdict as returned was not prepared by the jury because said jury did not return its said verdict to the court as required by law.

ARGUMENT.

The questions raised in this appeal are identical with those in the case of the Columbia Heights Realty Company *vs.* Macfarland *et al.*, 31 Apps., 112, the exceptions in this case being the same exceptions and to the same verdict as in the Columbia Heights case. The record herein is practically the same record, the only difference being that the abstract of the testimony taken before the jury, which was included in the former record, is eliminated from the record in this case and consequently the point that the verdict was unreasonable and contrary to the evidence which was argued in the former case is not in issue here. The other questions involved are the same as those decided in the former case and we rely upon the decision in that case as being controlling in the case at bar. We note from the opinion:

"1. The first error assigned relates to the action of the court in ordering the proceeding to be continued under the provision of the act of June 6, 1900, instead of under the act of March 3, 1899.

"The substantial difference between the two acts is that the former would require the new assessment to be made by a jury of twelve, while the latter limits the number to seven. The second, responding to a suggestion made by the court in *Todd v. Macfarland* (20 App. D. C., 176, 184; 30 Wash. Law Rep., 423), cures the defect in the former relating to the payment of the assessed benefits in certain installments. The latter contains no limit of the area of assessment while the former does.

"We regard it as unnecessary to consider whether the later act was intended to supersede the former entirely as regards the reassessment of benefits under the proceeding pending when the same was approved. The appellant and others interested were apparently of the opinion that it did so, as is shown by their motion of June 17, 1904. The opposing parties accepting that view as correct, the court made the order on that day, and the proceedings were continued in accordance therewith, resulting in the verdict returned June 6,

1906, the confirmation of which is the subject of the appeal. No objection was raised to the new order of procedure until a late hour in the proceedings. The objection appears for the first time in the affidavit of Leo Simmons, filed February 7, 1907, which is recited in the preliminary statement of the case. This affidavit, which does not appear to have been acted upon by the court, unless it may be embraced in the final act of confirmation, fails to show that the order of procedure was not his own conception, or that the motion had not been in fact filed. But were it more definite in its statement, it can not be received to contradict the record. Having suggested the procedure under the later act and carried on the litigation, without objection, in accordance therewith, the appellant is estopped to object to the verdict on the ground alleged. Having made his election he is bound by it. *Iron Gate Bank v. Brady*, 184 U. S., 665, 668; *Davis v. Wakeler*, 156 U. S., 680, 689; *Robb v. Vos*, 155 U. S., 1, 43; *Clark v. Barber*, 21 App. D. C., 274, 280; 31 Wash. Law Rep., 94.

"2. The second assignment of error is that, 'the court erred in proceeding in this case after an appeal was noted by the appellees from the order passed on the 4th of March, 1904, and from the decree of March 9, 1906. The first appeal referred to is based on the recital of the order of March 4, 1904, in which the court, after the filing of the mandate in this court, overruled a motion of the petitioners to confirm the verdict of the first jury. The order recites that they excepted and prayed an appeal. This order was in accordance with the mandate aforesaid. Whether it could have been appealed from or not is immaterial, as it is plain that no attempt was made to prosecute one. It is true the Commissioners were not required to give an appeal bond, but other steps were necessary. Instead of taking these, they showed that the intention had been abandoned, by coming in and filing the amended petition and prosecuting the proceeding. The record does not show the second appeal referred to. The assignment of error is without merit.

"3. The third assignment relates to the failure of the court as charged to examine the jurymen, and in refusing permission to the counsel for appellant to examine them touching their qualifications. Counsel had notice of the time when the jury was impanelled and the members sworn, and could have had the opportunity to examine them and

present his objections, if any, to each one. His request to examine them afterwards came too late. He made no objection to any one of them.

"4. The fourth assignment of error is: 'The court erred in refusing to discharge the jury on motion of appellant's counsel.' This motion, referred to in the preliminary statement, was overruled March 31, 1903.

"This motion came too late also. If there was any irregularity in the selection and summons of the jury it should have been raised before they were impanelled and sworn. Moreover, the record fails to show that the jurors were not regularly selected and summoned by the marshal. It appears therefrom that each member selected was notified, by notice signed by the marshal, on February 9, 1906, of his selection, and commanded to appear for service. In support of his motion he filed an affidavit of William B. Robison, chief deputy marshal, to the effect that he had conferences with the marshal concerning the selection of jurors, and that some of the persons selected were suggested by him. He was unable to say what jurors were suggested by him, but he added that the jurors were finally selected by the marshal from the entire list under consideration, and the notices regularly served. Assuming that this affidavit might be considered, without so affirming, all that appears therefrom is that the marshal canvassed a list of names with his chief deputy, and then made his selections. There is nothing illegal or improper in the marshal's conduct. The selections were his.

"5. The fifth assignment is that: 'The court erred in not hearing and sustaining appellant's plea of the Statute of Limitations.'

"We perceive no error in denying the effect of the plea of limitations. The proceeding was a continuous one: the amended and supplemental petition was no departure from the case originally begun. It was filed as a continuation of the same proceeding under the later statute, in obedience to the order of the court founded on appellant's motion, embodying the view that the further proceedings could be had only under the later act. Moreover, the amended petition of August 9, 1904, was filed within three years after the mandate of this court had been transmitted on January 22, 1903. And it was not until March 4, 1904, that the order was entered refusing to confirm the assessment of

as the amount of one-half had to be assessed under any conditions, the result of the extension of the area was to relieve the lands within the former fixed area to the extent of benefits assessed against lots situated farther away. That Congress had the power to alleviate the burden imposed by the former law by extending the assessment to all property actually benefited, at the same time giving all owners an opportunity to be heard before the assessment tribunal, we think can not be successfully denied.

"8. The eighth assignment relates to exceptions taken to the refusal of the court to permit the appellant to have the jurymen examined in order to show that they had not been properly selected and sworn. This question has been disposed of under the third and fourth assignments of error."

The judgment of the court below, it is submitted, should be affirmed.

EDWARD H. THOMAS,
JAS. FRANCIS SMITH,
Attorneys for Appellees.

present his objections, if any, to each one. His request to examine them afterwards came too late. He made no objection to any one of them.

"4. The fourth assignment of error is: 'The court erred in refusing to discharge the jury on motion of appellant's counsel.' This motion, referred to in the preliminary statement, was overruled March 31, 1903.

"This motion came too late also. If there was any irregularity in the selection and summons of the jury it should have been raised before they were impanelled and sworn. Moreover, the record fails to show that the jurors were not regularly selected and summoned by the marshal. It appears therefrom that each member selected was notified, by notice signed by the marshal, on February 9, 1906, of his selection, and commanded to appear for service. In support of his motion he filed an affidavit of William B. Robison, chief deputy marshal, to the effect that he had conferences with the marshal concerning the selection of jurors, and that some of the persons selected were suggested by him. He was unable to say what jurors were suggested by him, but he added that the jurors were finally selected by the marshal from the entire list under consideration, and the notices regularly served. Assuming that this affidavit might be considered, without so affirming, all that appears therefrom is that the marshal canvassed a list of names with his chief deputy, and then made his selections. There is nothing illegal or improper in the marshal's conduct. The selections were his.

"5. The fifth assignment is that: 'The court erred in not hearing and sustaining appellant's plea of the Statute of Limitations.'

"We perceive no error in denying the effect of the plea of limitations. The proceeding was a continuous one; the amended and supplemental petition was no departure from the case originally begun. It was filed as a continuation of the same proceeding under the later statute, in obedience to the order of the court founded on appellant's motion, embodying the view that the further proceedings could be had only under the later act. Moreover, the amended petition of August 9, 1904, was filed within three years after the mandate of this court had been transmitted on January 22, 1903. And it was not until March 4, 1904, that the order was entered refusing to confirm the assessment of

benefits made by the first jury. It is questionable, also, whether there is any limitation in such proceedings unless imposed by the condemnation act itself.

"6. The sixth assignment is that: 'The court erred in not hearing and sustaining appellant's plea of *res adjudicata*.'

"This plea was to the effect that the former verdict found that certain remaining parts of lots 1 and 30 in block 27, and lots 1 and 16 in block 28, would be damaged by opening of said street, and the issue is not now whether or not said lots were benefited, as that has been settled. And further, that the appellant is the holder under grants from the owner of said lots at that time, and petitioners are estopped by said verdict and its confirmation from now asserting that said lots were benefited by the said street extension.

"The plea is untenable. The former verdict not only shows that the parts of the lots mentioned were condemned, and part damaged, with the assessments therefor, but also that the remaining parts of the same were found to be benefited to a considerable extent. The former verdict, when confirmed, became conclusive as to the damages, and that question was not attempted to be reopened. The assessment for benefits having been vacated, the single purpose was to reassess the lots therefor. In general proceedings for condemnation, benefits to remaining land are to be set off against damages thereto. When separately stated in the verdicts in cases like this, one finding may be confirmed and the other vacated and opened for another assessment, as provided by the law.

"The appellant, having acquired title pending the proceedings, takes subject thereto, and is bound thereby. *Wilkinson v. D. C.*, 22 App. D. C., 289, 295: 31 Wash. Law Rep., 507; *Buchan v. Macfarland*, present term, ante, page 215. Moreover, it was substantially conceded on the argument that the appellant in this case is a corporation organized for the purpose of taking over and holding the property of the former owner, John Sherman, for the benefit of his devisees.

"7. The seventh assignment of error is: 'The court erred in granting the first prayer on behalf of the appellees, whereby the court said, by extension of the street the jury was to understand its establishment, laying out and completion for all ordinary purposes of a public highway; and erred in refusing to grant appellant's five separate prayers'

for instructions; and further erred by said first instruction by saying to the jury that they might assess the benefits which had resulted to any and all other pieces of land from the extension.'

"(1) This first instruction copied in the preliminary statement, appears to have been a fair and just one. The purpose of the condemnation proceeding was the opening of Eleventh street for all the ordinary uses of a street. The grade was known and taken into consideration by the jury which awarded not only the value of the land actually taken, but also the damage done by the reduction of the grade which would compel the grading of the adjacent lots and portions of lots. The purpose being to open and grade the street and damages having been awarded as the result of said opening for use, it was proper to assess the benefits accruing therefrom also. Any danger, however, that the jury would consider the benefits arising from any other improvements in the street than those above mentioned was entirely removed by the second and fourth instructions. These excluded any future or speculative benefits arising from special improvements in or uses of the street subsequent to condemnation and opening as aforesaid. The benefits arising from the opening of the street, though not immediately realized in full, were so far present as to be certain and ascertainable. All that was proper in the refused instructions is contained in those given.

"(2) Assuming that the record shows that assessments for benefits extended beyond the area fixed by the former law, these were made under the act of June 6, 1900, which contains no such limitation, but permitted the assessment to be made against all lands benefited by the street extension. See sec. 6, 31 Stat., 667. Committed, as we have seen, to the procedure under said act, the appellant is bound thereby. Moreover it is not perceived that any injury accrued to the appellant by reason of the extension of the area of benefits. Congress, in the exercise of its taxing power for the establishment and widening of streets, had the power to require the expense of the same to be taxed against all property found to be benefited, generally or in a defined district. *Bauman v. Ross*, 167 U. S., 548, 549. In this instance it required one-half the cost to be assessed, first in a certain district, and later to an area within the limits of actual benefits received. The latter method is the most equitable. Now,

as the amount of one-half had to be assessed under any conditions, the result of the extension of the area was to relieve the lands within the former fixed area to the extent of benefits assessed against lots situated farther away. That Congress had the power to alleviate the burden imposed by the former law by extending the assessment to all property actually benefited, at the same time giving all owners an opportunity to be heard before the assessment tribunal, we think can not be successfully denied.

"8. The eighth assignment relates to exceptions taken to the refusal of the court to permit the appellant to have the jurymen examined in order to show that they had not been properly selected and sworn. This question has been disposed of under the third and fourth assignments of error."

The judgment of the court below, it is submitted, should be affirmed.

EDWARD H. THOMAS,
JAS. FRANCIS SMITH,
Attorneys for Appellees.